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No. 80-1084

IN THE

Supreme Court of the United States

October Term, 1980

MOUNTAIN STATES LEGAL FOUNDATION, et al.,
Petitioners,

versus

DOUGLAS M. COSTLE,
IN HIS OFFICIAL CAPACITY AS ADMINISTRATOR OF
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, et al.,
Respondents.

SUPPLEMENTAL APPENDICES TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

JAMES G. WATT, COUNSEL OF RECORD
GALE A. NORTON
MOUNTAIN STATES LEGAL FOUNDATION
1200 LINCOLN STREET, SUITE 600
DENVER, COLORADO 80203
(303) 861-0244
ATTORNEYS FOR THE PETITIONERS

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*Representative James D. Reeves appeared as a petitioner before the Tenth Circuit Court of Appeals. The list of parties on page iii of the Petition for a Writ of Certiorari is amended to include Rep. Reeves as a petitioner in this litigation.

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APPENDIX C

SEPTEMBER TERM — OCTOBER 6, 1980

Before Honorable Oliver Seth, Chief Judge, Honorable Williams J. Holloway, Jr., Honorable Robert H. McWilliams, Honorable James E. Barrett, Honorable William E. Doyle, Honorable Monroe G. McKay, Honorable James K. Logan and Honorable Stephanie K. Seymour, Circuit Judges.

MOUNTAIN STATES LEGAL FOUNDATION, etc., et al.	)	
Petitioners,	)	
vs.	)	
	)	No. 79-2261
DOUGLAS M. COSTLE, et al.,	)	
Respondents.	)	
STATE OF COLORADO ex rel. J.D. MACFARLANE, Petitioner-Intervenor.	)	

This matter comes on for consideration of petitioners' petition for rehearing and suggestion for rehearing en banc in the captioned cause.

Upon consideration whereof, the petition for rehearing is denied by the panel to whom the case was argued and submitted.

The petition for rehearing having been denied by the panel to whom the case was argued and submitted, and no member of the panel nor judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, Rule 35, Federal Rules of Appellate Procedure, the suggestion for rehearing en banc is denied.

Howard K. Phillips, Clerk

CONSTITUTIONAL AND STATUTORY PROVISIONS

SECTION 110, 42 U.S.C. §7410 — STATE IMPLEMENTATION PLANS:

(a) **Submission to Administrator; time; procedures; contents; approval of revised plan.**

(1) Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, . . . a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. . . .

(2) The Administrator shall, within four months after the date required for submission of a plan under paragraph (1), approve or disapprove such plan or each portion thereof. The Administrator shall approve such plan, or any portion thereof, if he determines that it was adopted after reasonable notice and hearing and that —

. . . .

(G) it provides, to the extent necessary and practicable, for periodic inspection and testing of motor vehicles to enforce compliance with applicable emmission standards;

. . . .

(I) it provides that after June 30, 1979, no major stationary source shall be constructed or modified in any nonattainment area (as defined in section 171(2)) to which such plan applies, if the emissions from such facility will cause or contribute to concentrations of any pollutant for which a national ambient air quality standard is exceeded in such area, unless, as of the time of application for a permit for such construction or modification, such plan meets the requirements of part D (relating to nonattainment areas);

. . . .

(3)(A) The Administrator shall approve any revision of an implementation plan applicable to an air quality control region if he determines that it meets the requirements of paragraph (2) and has been adopted by the State after reasonable notice and public hearings.

. . . .

(c) **Preparation and publication of proposed regulations; hearings; promulgation of regulations.**

(1) The Administrator shall, after consideration of any State hearing record, promptly prepare and publish proposed regulations setting forth an implementation plan, or portion thereof, for a State if —

(A) the State fails to submit an implementation plan which meets the requirements of this section.
(B) the plan, or any portion thereof, submitted for such State is determined by the Administrator not to be in accordance with the requirements of this section, or
(C) the State fails, within 60 days after notification by the Administrator or such longer period as he may prescribe, to revise an implementation plan as required pursuant to a provision of its plan referred to in subsection (a)(2)(H).

. . . .

The Administrator shall, within six months after the date required for submission of such plan (or revision thereof), promulgate any such regulations unless, prior to such promulgation, such State has adopted and submitted a plan (or revision) which the Administrator determines to be in accordance with the requirements of this section.

SECTION 172, 42 U.S.C. § 7502 — NONATTAINMENT PLAN PROVISIONS:

(a) (1) The provisions of an applicable implementation plan for a State relating to attainment and maintenance of national ambient air quality standards in any nonattainment area which are required by section 110(a)(2)(I) as a precondition for the construction or modification of any major stationary source in any such area on or after July 1, 1979, shall provide for attainment of each such national ambient air quality standard in each such area as expeditiously as practicable, but, in the case of national primary ambient air quality standards, not later than December 31, 1982.

(2) In the case of the national primary ambient air quality standard for photochemical oxidants or carbon monoxide (or both) if the State demonstrates to the satisfaction of the Administrator (on or before the time required for submission of

such plan) that such attainment is not possible in an area with respect to either or both of such pollutants within the period prior to December 31, 1982, despite the implementation of all reasonably available measures, such provisions shall provide for the attainment of the national primary standard for the pollutant (or pollutants) with respect to which such demonstration is made, as expeditiously as practicable but not later than December 31, 1987.

(b) The plan provisions required by subsection (a) shall —

. . . .

(11) in the case of plans which make a demonstration pursuant to paragraph (2) of subsection (a) —

. . . .

(B) establish a specific schedule for implementation of a vehicle emission control inspection and maintenance program.

SECTION 176, 42 U.S.C. § 7506 — LIMITATIONS ON CERTAIN FEDERAL ASSISTANCE:

(a) The Administrator shall not approve any projects or award any grants authorized by this Act and the Secretary of Transportation shall not approve any projects or award any grants under title 23, United States Code, other than for safety, mass transit, or transportation improvement projects related to air quality improvement or maintenance, in any air quality control region—

(1) in which any national primary ambient air quality standard has not been attained,

(2) where transportation control measures are necessary for the attainment of such standard, and

(3) where the Administrator finds after July 1, 1979, that the Governor has not submitted an implementation plan which considers each of the elements required by section 172 or that reasonable efforts toward submitting such an implementation plan are not being made (or, after July 1, 1982, in the case of an implementation plan revision required under section 172 to be submitted before July 1, 1982).

(b) In any area which the State or, as the case may be, the general purpose local government or governments or any regional agency designated by such general purpose local governments for such purpose, is not implementing any requirement of an approved or promulgated plan under section 110, including any requirement for a revised implementation plan under this part, the Administrator shall not make any grants under this Act.

(c) No department, agency, or instrumentality of the Federal Government shall (1) engage in, (2) support in any way or provide financial assistance for, (3) license or permit, or (4) approve, any activity which does not conform to a plan after it has been approved or promulgated under section 110. No metropolitan planning organization designated under section 134 of title 23, United States Code, shall give its approval to any project, program, or plan which does not conform to a plan approved or promulgated under section 110. The assurance of conformity to such a plan shall be an affirmative responsibility of the head of such department, agency, or instrumentality.

(d) Each department, agency, or instrumentality of the Federal Government having authority to conduct or support any program with air-quality related transportation consequences shall give priority in the exercise of such authority, consistent with statutory requirements for allocation among States or other jurisdictions, to the implementation of those portions of plans prepared under this section to achieve and maintain the national primary ambient air quality standard. This paragraph extends to, but is not limited to, authority exercised under the Urban Mass Transportation Act, title 23 of the United States Code, and the Housing and Urban Development Act.

SECTION 307, 42 U.S.C. § 7607 — ADMINISTRATIVE PROCEEDINGS AND JUDICIAL REVIEW:

(b) (1). . . A petition for review of the Administrator's action in approving or promulgating any implementation plan under section 110 or section 111(d), any order under section 111(j), under section 112(c), under section 113(d), under section 119, or under section 120, or his action under section 119(c)(2)(A), (B), or (C) (as in effect before the date of enactment of the Clean Air Act Amendments of 1977) or under regulations thereunder, or any other final action of the Administrator under this Act

(including any denial or disapproval by the Administrator under title I) which is locally or regionally applicable may be filed only in the United States Court of Appeals for the appropriate circuit. Notwithstanding the preceding sentence a petition for review of any action referred to in such sentence may be filed only in the United States Court of Appeals for the District of Columbia if such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination. Any petition for review under this subsection shall be filed within sixty days from the date notice of such promulgation, approval, or action appears in the Federal Register, except that if such petition is based solely on grounds arising after such sixtieth day, then any petition for review under this subsection shall be filed within sixty days after such grounds arise.

SECTION 316, 42 U.S.C. § 7616 — SEWAGE TREATMENT GRANTS:

(a) No grant which the Administrator is authorized to make to any applicant for construction of sewage treatment works in any area in any State may be withheld, conditioned, or restricted by the Administrator on the basis of any requirement of this Act except as provided in subsection (b).

(b) The Administrator may withhold, condition, or restrict the making of any grant for construction referred to in subsection (a) only if he determines that —

(1) such treatment works will not comply with applicable standards under section 111 or 112,

(2) the State does not have in effect, or is not carrying out, a State implementation plan approved by the Administrator which expressly quantifies and provides for the increase in emissions of each air pollutant (from stationary and mobile sources in any area to which either part C or part D of title I applies for such pollutant) which increase may reasonably be anticipated to result directly or indirectly from the new sewage treatment capacity which would be created by such construction.

(3) the construction of such treatment works would create new sewage treatment capacity which —

(A) may reasonably be anticipated to cause or contribute to, directly or indirectly, an increase in emissions of any air pollutant in excess of the increase provided for under the provisions referred to in paragraph (2) for any such area, or

(B) would otherwise not be in conformity with the applicable implementation plan,

. . . .

In the case of construction of a treatment works which would result, directly or indirectly, in an increase in emissions of any air pollutant from stationary and mobile sources in an area to which part D of title I applies, the quantification of emissions referred to in paragraph (2) shall include the emissions of any such pollutant resulting directly or indirectly from areawide and nonmajor stationary source growth (mobile and stationary) for each such area.

UNITED STATES CONSTITUTION, ARTICLE IV, SECTION 4:

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

UNITED STATES CONSTITUTION, AMENDMENT I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

UNITED STATES CONSTITUTION, AMENDMENT V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be

deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

UNITED STATES CONSTITUTION, AMENDMENT X:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.